



United States Patent and Trademark Office



cn

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
POR STATES
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO. FILING DATE 12/14/2001	FIRST NAMED INVENTOR S. Scott Friderich	ATTORNEY DOCKET NO. COI	NFIRMATION NO. 5217
PAULEY PETERSEN KINNE & 2800 WEST HIGGINS ROAD SUITE 365 HOFFMAN ESTATES, IL 60195	k ERICKSON	EXAMINER REICHLE, KAF ART UNIT 3761 DATE MAILED: 08/28/2003	

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)	0		
	10/017,474	FRIDERICH ET AL			
Office Action Summary	Examiner	Art Unit			
	Karin M. Reichle	3761			
The MAILING DATE of this communication Period for Reply	appears on the cover sh	eet with the correspondence add	iress		
A SHORTENED STATUTORY PERIOD FOR RETHE MAILING DATE OF THIS COMMUNICATION - Extensions of time may be available under the provisions of 37 CF after SIX (6) MONTHS from the mailing date of this communication. If the period for reply specified above is less than thirty (30) days, If NO period for reply is specified above, the maximum statutory period for reply within the set or extended period for reply will, by second part of the process	ON. R 1.136(a). In no event, however, in. a reply within the statutory minimuneriod will apply and will expire SIX (in the statute, cause the application to become	may a reply be timely filed n of thirty (30) days will be considered timely 5) MONTHS from the mailing date of this co ome ABANDONED (35 U.S.C. § 133).			
1) Responsive to communication(s) filed on	14 December 2001.				
2a)☐ This action is FINAL . 2b)☐	This action is non-final.				
3) Since this application is in condition for al closed in accordance with the practice un			e merits is		
Disposition of Claims					
4)⊠ Claim(s) <u>1-27</u> is/are pending in the application		_			
4a) Of the above claim(s) is/are with	idrawn from consideratio	n.			
5) Claim(s) is/are allowed.					
6) Claim(s) is/are rejected.					
7) Claim(s) is/are objected to.	l/or alastian requirement				
8) Claim(s) <u>1-27</u> are subject to restriction and Application Papers	a/or election requirement.				
9) The specification is objected to by the Exar	miner				
10) The drawing(s) filed on is/are: a) a		by the Examiner.			
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).					
11) The proposed drawing correction filed on is: a) approved b) disapproved by the Examiner.					
If approved, corrected drawings are required in reply to this Office action.					
12)☐ The oath or declaration is objected to by the Examiner.					
Priority under 35 U.S.C. §§ 119 and 120					
13) Acknowledgment is made of a claim for for	reign priority under 35 U.	S.C. § 119(a)-(d) or (f).			
a) ☐ All b) ☐ Some * c) ☐ None of:					
1. Certified copies of the priority documents have been received.					
2. Certified copies of the priority docum	2. Certified copies of the priority documents have been received in Application No				
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. 					
14) Acknowledgment is made of a claim for don	nestic priority under 35 U	.S.C. § 119(e) (to a provisional	application).		
a) ☐ The translation of the foreign language 15)☐ Acknowledgment is made of a claim for dor					
Attachment(s)	• •				
1) Notice of References Cited (PTO-892) 2) Notice of Draftsperson's Patent Drawing Review (PTO-948 3) Information Disclosure Statement(s) (PTO-1449) Paper No	3) 5) No	erview Summary (PTO-413) Paper No(ice of Informal Patent Application (PTC er:			

Application/Control Number: 10/017,474

Art Unit: 3761

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-14, drawn to A Material, classified in class 442, subclass 327+.
- II. Claims 15-26, drawn to An Absorbent Article, classified in class 604, subclass385.28.
- III. Claim 27, drawn to A Method of Making an Absorbent Product, classified in class156, subclass 229.

The inventions are distinct, each from the other because of the following reasons:

Inventions III and (I and II) are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the process as claimed can be used to make another and materially different product not requiring the specifics of the Groups I and II claims, e.g. without a Young's modulus of 4.5 psi or a flap with a tensioning force in its long direction, which claims serve as evidence claims.

Inventions II and I are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant

Page 3

Art Unit: 3761

case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination does not require a Young's modulus up to about 4.5 psi/% in a first axis of a material as claimed in the subcombination claims which serve as evidence claims. The subcombination has separate utility such as a flap extending in the transverse direction of a garment.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification which would lead to diverging fields of search, restriction for examination purposes as indicated is proper.

If the Group II claims are elected:

This application contains claims directed to the following patentably distinct species of the claimed invention: one of the species of Figures 3-5, the species of Figure 7, the species of Figures 8-11 and the species of figures 8-10 and 12 and one of the species of the material of claim 23, the species of the material of claim 24 and the species of the material of claim 25.

Applicant is required under 35 U.S.C. 121 to elect 1) a single disclosed species of the Figures and 2) a single disclosed species of the material for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 15-16, 20 and 22 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable

Application/Control Number: 10/017,474

Art Unit: 3761

thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

For example, Applicants could elect the Group II claims, the species of Figures 3-5 and the species of material of claim 23 to be responsive.

A telephone call was made to Mr. Roland Norris on August 22, 2003 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the

Page 5

currently named inventors is no longer an inventor of at least one claim remaining in the

application. Any amendment of inventorship must be accompanied by a request under 37 CFR

1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617.

The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Weilun Lo can be reached on (703) 308-1957. The fax phone number for the

organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding

should be directed to the receptionist whose telephone number is (703) 308-0858.

K.A. Ruchio

Karin M. Reichle Primary Examiner

Art Unit 3761

KMR